

APPENDIX B

**DWU/SOUTH WALTON UTILITY
AGREEMENT**

WATER SUPPLY AGREEMENT

THIS AGREEMENT is made as of the 19 day of December, 2000, by and between DESTIN WATER USERS, INC. (hereinafter referred to as "DWU"); and SOUTH WALTON UTILITY COMPANY, INC. (hereinafter referred to as "SWUC");

WITNESSETH:

WHEREAS, SWUC and DWU are both Florida not for profit corporations, and own, operate, and maintain a water production and distribution system to supply potable water to their respective members; and

WHEREAS, DWU has a water system capacity capable of serving its present members but requires additional supply of potable water in order to better serve its members, and

WHEREAS, SWUC has a water system capacity currently capable of serving its present members but requires an additional supply of treated potable water in order to be able to serve its members, and

WHEREAS, SWUC is the holder of Water Use Permit (hereinafter referred to as "Water Use Permit") issued by the Northwest Florida Water Management District which authorizes SWUC to transfer water to DWU, and

WHEREAS, SWUC is in the process of increasing its permitted water use limits to serve its future members, and that such permitting can be modified to include the future needs of DWU, and

WHEREAS, SWUC is in the process of expanding its water system capacity to serve its future members, and that such expansion can be modified to include the future needs of DWU, and

WHEREAS, the DWU is willing to become a member of SWUC and to purchase treated water from SWUC to provide its additional needs subject to the terms of this Agreement;

WHEREAS, SWUC is willing to provide treated water to the DWU subject to the terms of this Agreement; and

WHEREAS, this Agreement is being entered into in part as support of the request to the Northwest Florida Water Management District to transfer the Water Use Permit of WRP, Inc. to SWUC; and

WHEREAS, the parties acknowledge that additional capital improvements will be necessary to supply water pursuant to the terms of this Agreement; and

WHEREAS, the parties recognize and understand that additional capital improvements necessary to furnish water to DWU may include, but not be limited to, additional wells, piping, storage tanks and construction of a pipeline to Destin from existing SWUC locations; and

WHEREAS, SWUC has obtained a loan of approximately \$6,800,000.00 to finance the capital improvements through the Florida Department of Environmental Protection State Revolving Loan Fund (hereinafter the "Loan") for capital improvements associated with this Water Supply Agreement.

NOW THEREFORE, in consideration of the foregoing premises which shall be deemed an integral part of this Agreement, and of the mutual covenants and agreements hereafter set forth, DWU and SWUC intend to be legally bound and hereby agree as follows:

1. **SUPPLY OF WATER**

a. **Point(s) of Delivery:** SWUC shall supply potable water to DWU at the point(s) of delivery hereinafter that are more particularly described in **Exhibit "A"** and to be located at any other points mutually agreed upon by the from time to time by the parties to this Agreement, in accordance with the terms, covenants and conditions of this Agreement, and throughout any renewal or extension of this Agreement.

b. **Regulatory Standards:** Water supplied by SWUC pursuant to this Agreement shall conform to all applicable standards established by the Florida Department of Health and Rehabilitative Services, Florida Department of Environmental Protection and all other regulatory agencies of appropriate jurisdiction, as such standards now exist or may be amended from time to time. SWUC and DWU further agree to operate and maintain their respective water supply/distribution systems in accordance with such rules, regulations, permits or laws of any such regulatory agencies of appropriate jurisdiction and DWU will cooperate in obtaining any such permits, certificates, or the like, as may be required to comply therewith.

c. **Permits:** SWUC shall hold and maintain all water permits and other permits (hereinafter collectively referred to as "Permits") which allow and for the withdrawal, transmission, treatment, production, and distribution of water from SWUC's system to DWU. SWUC shall exercise its best efforts to obtain, maintain, and comply with operation Permits which contain minimum regulatory requirements and standards resulting in the lowest reasonable operational and maintenance and capital costs to DWU. If SWUC violates any Permit requirement, SWUC shall notify the regulatory agencies as required by law and shall notify DWU in writing immediately. SWUC shall provide information to and seek the advice of DWU on licensing and permitting issues at least thirty (30) days prior to entering into a binding license or Permit unless DWU waives its participation. SWUC shall be the sole contact with the regulatory agencies unless otherwise requested by DWU. DWU shall further comply with all terms and conditions of SWUC's Water Use Permit issued by Northwest Florida Water Management District as such conditions pertain to DWU.

1. SWUC shall apply for and negotiate Permit renewals as needed. If amendments to the Permit limits are discussed between regulatory authorities and SWUC, SWUC shall notify DWU in writing within thirty (30) days of any such discussions. SWUC shall consult with and inform DWU of any possible changes to the Permit limits prior to any changes being made

to the Permit limits. SWUC shall be the sole contact with regulatory authorities unless otherwise requested by DWU. In the event SWUC fails in its responsibilities to apply for and negotiate permits as needed, DWU shall have the right to apply for and negotiate permits as needed for the continued operation of DWU's system.

2. In the event SWUC transfers, sells or assigns its Water Use Permit which provides for production of water for DWU's use, SWUC shall pay to DWU 50% of the net proceeds received by SWUC for the transfer, sale or assignment of its Water Use Permit.

3. Section (c.2) above shall survive a termination of this Agreement pursuant to paragraph 3(2) below.

d. **Quantity:** SWUC shall supply such quantities of water as may be required by DWU. It is anticipated by both parties, that the amounts needed by DWU over the life of this Agreement shall be approximately in accordance with "Water Master Plan for the Water Resource Partnership," Baskerville-Donovan, Inc., November 1995. At the outset of this agreement, SWUC and DWU agree that such quantities shall be at least 500,000 gallons per day and shall not exceed the maximum permitted limits contained in SWUC's Water Use Permit issued by Northwest Florida Water Management District, as it may be revised from time to time. DWU shall reevaluate its water needs each year on the anniversary the date of this Agreement and shall notify SWUC, in writing, of DWU's estimated water needs for the upcoming two (2) years.

e. **Pressure:** SWUC shall supply water at a reasonably constant pressure of not less than forty (40) psig at the delivery points. If DWU requires a greater pressure than that normally available at the points of delivery, then the cost of providing such greater pressure shall be borne by DWU.

f. **Water Supply Interruption:** Any temporary or partial failures in water supply or water pressure or emergency situations such as breakage of the main water line, power failure, flood, fire, use of water to fight fire, hurricane or any other catastrophe which may cause failures of pressure or water supply shall excuse SWUC from the terms of this Agreement for such reasonable period of time as may be necessary to restore service. SWUC shall remedy such failures with all possible dispatch and shall take such action as may be necessary to supply DWU with the required quantities and or pressure of water. In the event of an extended shortage of water and or decrease in pressure of water, or the supply of water or pressure of water available to SWUC is otherwise diminished over an extended period of time, the supply and or pressure of water to DWU's members shall be reduced or diminished in the same ratio or proportion as the supply and or pressure to SWUC's members is reduced or diminished.

g. **Liability for Failure to Produce:** SWUC shall not be liable to DWU for any failure of SWUC to provide potable water in accordance with this Agreement, provided that such failure results from natural causes or from damage to the water main or the water production or distribution facilities of SWUC or other cause outside of the reasonable control of SWUC.

SWUC shall be liable for failure to provide potable water in accordance with this Agreement, provided that such failure results from negligence on the part of SWUC or results from the breach of any agreement that SWUC has with any third party.

h. **Equipment Costs:** SWUC shall be responsible for all costs associated with metering equipment at the points of delivery, including the meter vault and other required devices to measure the quantities of water supply delivered to DWU. All such metering equipment shall be of standard type and quality.

i. **Calibrations:** SWUC shall calibrate the metering equipment at the points of delivery whenever requested by DWU, but such requests shall not exceed once every twelve (12) months. A meter at the point of delivery which registers not more than two percent (2%) above or below the test result shall be deemed to be accurate.

j. **Meter Reading:** SWUC shall read the metering equipment monthly. An appropriate official of DWU shall, at reasonable times established by SWUC, have access to meters at the delivery points, for the sole purpose of verifying SWUC's readings. If the previous readings of any meter disclosed by test are inaccurate, SWUC shall correct the inaccuracy for six (6) months prior to such test, in accordance with the percentage of accuracy found by such tests. If any meter fails to register for any period of time, the quantity of water furnished by SWUC during such time shall be deemed the quantity of water delivered the year prior at the same corresponding period of time, unless SWUC and DWU agree otherwise.

k. **Resale:** Water supplied pursuant to this Agreement is to be used only for distribution by DWU within its service area. In no event shall any water supplied by SWUC pursuant to this Agreement be resold at wholesale or in bulk by DWU outside its respective service area.

2. **FEES AND CHARGES**

DWU shall pay to SWUC the following charges for water supplied to DWU pursuant to this Agreement:

a. **Monthly Usage Charge:** DWU shall pay to SWUC \$0.55 cents per 1,000 gallons of water (the "Monthly Usage Charge"). The Monthly Usage Charge shall be subject to adjustments as described in Section 5 of this Agreement.

b. **Advance Payment:** DWU may pay in advance at its sole discretion any amount and any advanced payment shall be credited to DWU's account and applied to the Monthly Usage Charge. Such advance payment shall represent payment for monthly charges to ensure an adequate supply of water from SWUC to meet DWU's present and future demands. Advance payments received by SWUC from DWU may be applied by DWU to operation and maintenance costs or debt service associated with the Loan for the construction of the pipeline or both at DWU's discretion.

c. **Statements:** SWUC shall submit monthly statements to DWU no later than the 10th day of each month for water supplied to DWU pursuant to this Agreement during the preceding month. Charges shall be based on consumption as determined by meters to be provided by SWUC and installed by SWUC at the points of delivery. Payment shall be made no later than the 25th of each month. Subject to Section 9 of this Agreement, the failure to make payment within the time required shall be a basis for denial or termination of service, unless DWU has in good faith contested the amount of the statement in writing. If DWU fails to pay the current month's charges within 30 days of the statement date, DWU shall pay to SWUC a delinquency charge of 10% of the current month's charges that have not been timely paid. The 10% delinquency charge is a one time charge against the monthly statement that is overdue. Any successive months charges that are not paid within 30 days will also be subject to a one time 10% delinquency charge.

d. **Connection Fee:** DWU shall pay an initial Connection Fee to connect the SWUC system with the system of DWU, the sum in the total amount of \$2,250,000.00 (the "Connection Fee") of which \$1,750,000.00 is acknowledged to have been received by SWUC as of the date of this Water Supply Agreement. DWU shall have ten (10) days from the date of this Agreement to pay SWUC the balance of the Connection Fee in the amount of \$500,000.00. The Connection Fee shall be utilized by SWUC to pay its Out-Of-Pocket Costs. For purposes of this Agreement, the term "Out-Of-Pocket" shall mean all costs and expenses incurred by SWUC to make the initial capital improvements that are necessary to furnish DWU water pursuant to this Agreement that are not paid for or otherwise covered by the proceeds of the Loan. Except as provided for below, the Connection Fee is non-refundable by SWUC to DWU. The Connection Fee shall be one-half (1/2) of the total Out-Of-Pocket Costs as of the date of the completion of the initial capital improvements. If one-half (1/2) of the Out-Of-Pocket Costs as of the date of the completion of the capital improvements is greater than or less than the amount of the Connection Fee paid by DWU, the parties will adjust the difference between themselves so that the Connection Fee is equal to one-half (1/2) of the Out-Of-Pocket Costs. For example, if one-half (1/2) of the Out-Of-Pocket Costs exceeds the Connection Fee by \$10,000.00, then DWU shall pay SWUC an additional Connection Fee of \$10,000.00. Conversely, if one-half (1/2) of the Out-Of-Pocket Costs is \$10,000.00 less than the Connection Fee, then SWUC shall reimburse DWU \$10,000.00 of the Connection Fee already paid by DWU. Throughout the construction project and after completion of the construction project, SWUC shall make all records relating to the construction available to DWU for inspection and copying at reasonable times upon the reasonable requests of DWU. The Connection Fee to be paid by DWU under this section may be altered, amended or revised if the parties agree. Any future phases of the construction of capital improvements necessary in order to supply water from SWUC to DWU shall require DWU to pay one-half of the cost of the future phases of construction of capital improvements. The parties shall pay equally costs of all capital improvements mutually agreed to by the parties and necessary to furnish water from SWUC to DWU through the term of this Agreement.

e. **Loan/Debt Service:** The parties agree SWUC has obtained the Loan to pay for capital improvements and, unless modified by Section 5 of this Agreement, the parties agree that DWU will be obligated to pay one-half of the Debt Service (as defined below) to SWUC in the form of semi-annual payments two weeks prior to the due date of the payments from SWUC to the lender.

The Debt Service shall be defined for purposes of this Agreement as all principal, interest and associated Loan related charges or fees. SWUC shall utilize all Loan funds exclusively for all eligible capital improvements, unless otherwise agreed to by the parties to this Agreement. Pursuant to 2b above, DWU may make prepayment of Debt Service and in the event of such prepayment by DWU, DWU's share of the Debt Service shall be reduced to accurately reflect the affect of the prepayment on the Debt Service.

3. **TERM**

1. The initial term of the Agreement shall be for a term of twenty (20) years, commencing from the date of this Agreement. This Agreement shall thereafter be automatically renewed for successive periods of twenty (20) years, or for such term as may be agreed upon, in writing, by SWUC and DWU.

2. If there is any petition, complaint or proceeding in eminent domain by any entity to condemn, take over or acquire DWU that results in a final determination, ruling or order in favor of the condemning party, then this Agreement shall be immediately terminated and the parties will have no further rights or responsibilities pursuant to the terms of this Agreement unless otherwise specifically retained. If, however, SWUC is subject to a complaint, petition or action in eminent domain to condemn, acquire or take SWUC then the terms, covenants and conditions contained in this Agreement shall survive any such taking, and this Agreement shall continue to be binding on SWUC its successors, assigns or any entity acquiring SWUC through eminent domain and/or condemnation proceedings.

4. **SUCCESSOR AND ASSIGNS**

There shall be no right of assignment of this Agreement without the written consent of the parties to this Agreement. In the event of a valid assignment, the terms and conditions of this Agreement shall be binding on all assignees.

5. **MODIFICATIONS OF TERMS OF CONTRACT**

No modification to this Agreement shall occur unless agreed to in writing by the parties to this Agreement except as otherwise set forth in this Agreement. The Monthly Usage Charge shall be subject to modification each year on the anniversary date of this Water Supply Agreement. Any increase or decrease in rates shall be based upon a demonstrable increase or decrease in the cost of performance hereunder, but such cost shall not include increased capitalization of the SWUC's system to provide SWUC's own needs. The Monthly Usage Charge shall be based on operation and maintenance costs including, but not limited to, labor related costs, cost of power, chemicals for treatment, insurance, lab fees, surcharges, repairs and replacements and other operation and maintenance costs. Operation and maintenance charges shall be allocated on the basis of actual water delivered to the DWU. No such increase or decrease shall occur until an independent rate consultant, acceptable to both DWU and SWUC, has been retained and has

provided written recommendations on such increases or decreases. All fees associated with hiring a rate consultant shall be split equally between SWUC and DWU.

6. **REGULATORY AGENCIES AND PERMITS**

This Agreement is subject to such permits, rules, regulations or laws as may be applicable to similar agreements in this state and the SWUC and DWU shall cooperate with one another in obtaining all necessary permits, certificates or the like as may be required to comply with any rules, regulations or laws.

7. **APPLICABLE LAW**

The parties agree that this Agreement was entered into in the State of Florida and that the laws of the State of Florida apply to the interpretation, construction and enforcement of this Agreement.

8. **ENTIRE AGREEMENT**

No prior or present agreements or representations of the parties or their predecessors shall be binding on either of the parties to this Agreement. This Agreement shall replace and supersede any previous agreements, including but not limited to, the original Water Supply Agreement of March 6, 2000 and the Addendum to Water Supply Agreement dated June 9, 2000. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing, and executed by the parties.

9. **DISPUTE RESOLUTION**

a. In the event that SWUC alleges a breach by DWU, then the parties shall abide by the terms of this Agreement until final resolution of the alleged breach through agreement, mediation, litigation or any other applicable proceeding.

b. DWU and SWUC agree that in the event a dispute should arise out of this Agreement, they will attempt in good faith to settle the matter through discussion, negotiation and/or mediation. Any dispute arising under this Agreement which cannot be resolved informally shall be resolved in the following manner:

c. **Attorneys' Fees and Costs:** In the event there is a breach of this Agreement and it becomes necessary for any party to employ the services of an attorney either to enforce the Agreement or pursue other remedies, with litigation or adversarial administrative proceedings, the losing party or parties shall pay to the successful party's or parties' reasonable attorneys' fees and such reasonable costs and expenses as are incurred in enforcing the Agreement or pursuing other remedies to the extent allowed by law.

d. **Mediation**: As a condition precedent to litigation or adversarial administrative proceeding, the parties shall submit the matter to non-binding mediation in an effort to resolve their differences and the parties shall equally share the cost of mediation.

10. **EXECUTION OF DOCUMENTS**

This Agreement shall be executed in duplicate originals, either of which shall be regarded for all purposes as an original and all of which shall constitute one and the same instrument. Each party to this Agreement shall maintain possession of one of the duplicate originals of this Agreement.

11. **INDEPENDENT CONTRACTOR**

SWUC shall provide water to DWU and shall provide said service as an independent contractor and not as an employee, representative or agent of DWU.

12. **SEVERABILITY**

In the event that any provision of this Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements to this Agreement or such other appropriate actions as shall, to the maximum extent practical in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force or effect.

13. **SECTIONS, CAPTIONS AND REFERENCES**

The section headings and captions contained herein are included for convenience only and shall not be considered part of this Agreement or affect in any manner its construction or interpretation. Except as otherwise indicated, all references herein to sections are to sections of this Agreement.

14. **DEFAULT AND REMEDY**

The parties agree this Agreement may not be terminated except in accordance with Section 3 above. The remedy for a breach of the Agreement shall be specific performance, injunctive relief and any other equitable relief or legal relief, as well as monetary damages.

15. **AMBIGUITY**

The parties agree that each one has played an equal part in the negotiation and drafting of this Agreement, and in the event any ambiguity should be asserted or realized in the

interpretation or construction of this Agreement, the result of such ambiguity shall be equally assumed and realized by each party.

16. **WAIVER OF JURY TRIAL**

The parties to this Agreement hereby waive their rights to jury trial of any dispute arising out of this Agreement.

17. **NOTICES**

Except as expressly provided in paragraph 1 of this Agreement, any notice required pursuant to this Agreement shall be deemed sufficient if sent by United States Mail, Postage Prepaid, to the following:

If to Destin Water Users, Inc.:

Richard Griswold
P.O. Box 308
Destin, FL 32540

If to South Walton Utility Company, Inc.:

Pete DeBogory
79 Old Highway 98
Destin, FL 32550

18. **THIRD PARTY BENEFICIARY**

To the extent that this Agreement impacts the terms and conditions of the Northwest Florida Water Management District's Water Use Permit which Permit authorizes the use of the water which is the subject of this Agreement, the District shall be a third party beneficiary and may enforce the terms of this Agreement.

19. **DUPLICATE ORIGINALS**

The parties to this Agreement acknowledge that this Agreement will be prepared in duplicate and the parties will execute duplicate originals of the Agreement with each party retaining one fully executed original Agreement.

IN WITNESS WHEREOF, DWU and SWUC, having caused this Agreement to be executed in two (2) counterparts by their authorized representatives as of the day and year first written above.

SOUTH WALTON UTILITY COMPANY, INC.

BY: Peter DeBogory
Peter DeBogory, General Manager

Jan Roberts
Witness

[Signature]
Witness

STATE OF FLORIDA)
)
COUNTY OF OKALOOSA)

The foregoing instrument was acknowledged before me this 19 day of December, 2000, by Peter DeBogory, General Manager, on behalf of South Walton Utility Company, Inc., who is personally known to me or who produced _____ as identification and who did take an oath and acknowledged and declared that he executed the same for the uses and purposes therein set forth.



Mary C. Locke
Commission # CC 938822
Expires May 21, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Mary C. Locke
NOTARY'S NAME: Mary C. Locke
NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: 5/21/04

DESTIN WATER USERS, INC.

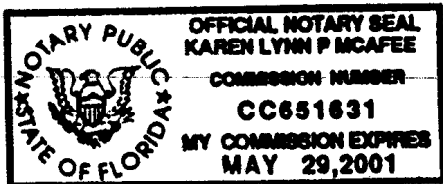
BY: Richard Griswold
Richard Griswold, General Manager

Karen Gates
Witness

Sarah Dodge
Witness

STATE OF FLORIDA)
)
COUNTY OF OKALOOSA)

The foregoing instrument was acknowledged before me this 13th day of December, 2000, by Richard Griswold, General Manager, on behalf of Destin Water Users, Inc., (who is personally known to me or who produced _____ as identification and who did take an oath and acknowledged and declared that he executed the same for the uses and purposes therein set forth.



Karen Lynn P. McAfee
NOTARY'S NAME: Karen Lynn P. McAfee
NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: May 29, 2001